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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/805,148	03/19/2004	Robert A. Ciccarelli JR.	4570.89A	8644

7590 11/15/2004

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EXAMINER

SOLAK, TIMOTHY P

ART UNIT PAPER NUMBER

3746

DATE MAILED: 11/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/805,148

Applicant(s)

CICCARELLI ET AL.

Examiner

Timothy P. Solak

Art Unit

3746

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 19 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3,5,6,9,11 and 12 is/are rejected.
- 7) ☒ Claim(s) 4, 7-8, 10 and 13-20 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 05/17/2004.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Specification*

The disclosure is objected to because of the following informalities:

- o The related application information on page 1, line 2, needs to be updated; i.e. --now U.S. Patent 6,736,615.-- should be added.
- o Recitation of "color 110" on page 6, line 2, would be clearer if written as --collar 110--.

Appropriate correction is required.

The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

The following title is suggested: --Fan Motor Bracket and Baffle Assembly--.

### *Double Patenting*

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claim 5 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claim 10 of U.S. Patent No. 6,736,615.

Claim 6 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claim 11 of U.S. Patent No. 6,736,615.

Claim 9 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claim 1 of U.S. Patent No. 6,736,615.

Although the conflicting claims are not identical, they are not patentably distinct because the claims of U.S. Patent 6,736,615 contain all the elements of claims 5, 6 and 9, of the instant invention. Thus, when the patent expires, one making the invention set forth in the then expired claims would be infringing the claims of the instant application. This would constitute an unlawful extension of monopoly as set forth in the law. In *Re Braithwaite*, 154 USPQ 38 at 40) (CCPA 1967). Additional limitations, namely "in a fixed position" recited in the instant application is not considered to patentably distinguish the claims, because it was old and well known, in the art of pump fabrication, to capture a bearing in a fixed position.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Erickson Jr. (4,824,333). Erickson Jr. teaches a fan assembly 14 having an intergraded brush support 36 and bearing retainer 54/60 comprising: a motor assembly 14 having a rotatable shaft 32, a working air fan 106/136 coupled to said shaft and a motor bracket and baffle assembly 16 interposed between said working air fan and said motor assembly. Erickson Jr. further discloses said motor bracket and fan assembly comprises a bracket 46, said motor assembly mounted (see screw 48) to said bracket and a retainer 60 coupled to said bracket (column 3, lines 35-39) said bracket and said retainer capturing a bearing 56 therebetween in a fixed position.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Erickson Jr. (previously mentioned), in view of Taylor et al. (4,777,395). Although Erickson Jr. teaches most of the limitations of the claims, including a motor bracket and baffle assembly having a bearing and a bracket, he does not disclose a cover plate. Taylor et al., disclosing a motor bracket, specifically teaches a bracket 10, a cover plate 48 having a bracket hole (not labeled but clearly seen in Figure 6B) and a bearing wall (shaded area of Figure 6A) extending axial therefrom and around said bracket hole enclosing a portion of a bearing 44 (see Figure 5). Taylor et al. teach the cover plate advantageously positioned the bearing (column 3, lines 30-32).

Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to have used the cover plate taught by Taylor et al., in the pump disclosed by Erickson Jr., to have advantageously positioned the bearing.

***Allowable Subject Matter***

Claims 4, 7-8, 10 and 13-20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 5, 6 and 9 would be allowable if rewritten to overcome the double patenting rejections, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

Applicant's arguments, received with the preliminary amendment on 03/19/2004, with respect to Claims 1-4 and 11-14 of the parent application 10/290,724, have been considered but are moot in view of the new ground(s) of rejection.

With respect to the arguments directed towards the Taylor et al. reference, namely "tab connectors 50 capturing a bearing 44 between a retainer 48 and a bracket 30"; the Taylor et al. reference is no longer used to teach "tab connectors". The argument that Taylor et al. "does not teach one of ordinary skill in the art to use a retainer with holes that receive fasteners to secure

the bearing retainer to the bracket" is moot because Taylor et al. is no longer relied upon for such teachings.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- Toyoshima et al. (5,110,266) teach a bracket located between a fan and a motor.
- Conger, IV (4,978,281) teaches a motor bracket and brush assembly.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Timothy P. Solak whose telephone number is 703-308-6197. The examiner can normally be reached on Monday through Friday from 10am to 6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cheryl Tyler can be reached on 703-306-2772. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR

Art Unit: 3746

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system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*Art Unit 3746 will be relocating on November 18, 2004. After the 18<sup>th</sup>, the Examiner can be reached at 517 272-4833 and the supervisor at 517 272-4834.*



Timothy P. Solak  
Examiner  
Art Unit 3746  
November 9, 2004